facilities and services essential to competitors to drive those competitors out of both the local and long distance markets.

44. As a consequence, it is necessary to counterbalance the BOC's very real, anticompetitive business incentives with the prompt application of monetary consequences based on an anti-backsliding plan that will promptly detect and deter such behavior. In order to offset the anticompetitive incentives that are inherent in the BOC's position, an anti-backsliding plan must have sufficient and definite consequences to preclude the BOC from rationally concluding that it stands more to gain by discriminating and paying the consequences under the remedy plan, than by competing fairly on a level playing field.

45. As the Commission explained in its *Michigan 271 Order*, to provide the most effective possible deterrent against discriminatory performance after a Section 271 application is granted, an anti-backsliding plan should include "appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards."[35] To meet this standard, an anti-backsliding plan must have sufficient and immediate monetary consequences to dissuade the BOC from exercising its natural incentives to leverage its monopoly power in the local market, together with its position as the primary supplier of wholesale inputs to CLECs, to harm competition in both the local and long distance markets. In that connection, the Commission has emphasized the importance of remedial measures that are "automatically triggered" by noncompliant conduct:[36]

> [A]s part of our public interest inquiry, we would want to inquire whether the BOC has agreed to private an *self-executing*

[35] *Michigan 271 Order* ¶ 394. *See also Second BellSouth Louisiana Order* ¶ 364.

[36] *Michigan 271 Order* ¶ 394.

> *enforcement mechanisms* that are automatically triggered by noncompliance with the applicable performance standard without resorting to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.

46. In its New *York 271 Order*, the Commission identified the following key elements in a performance monitoring and enforcement plan that would support a showing "that markets will remain open after grant of the application:"[37]

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- reasonable assurances that the reported data is accurate.[38]

47. In its Application, Verizon asserts that the New Jersey PIP satisfies all of the key criteria identified by this Commission in its *New York 271 Order*. Application at 103. Verizon's assertion is meritless.

A. Reliance on the PIP is Premature.

48. As a preliminary matter, Verizon's reliance on the PIP to support its application is premature. Although the New Jersey BPU, during an October 12, 2001 meeting, voiced its

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[37] *New York 271 Order* ¶ 435.

[38] *Id.* ¶ 433.

general approval of the performance remedy plan proposed by the New Jersey BPU Staff, it has not issued a final written order. *See* Guerard/Canny/DeVito Decl. ¶ 152. The precise contours of the provisions that will be included in the final written order of the New Jersey BPU remain unclear. For example, during the NJ BPU Board meeting held on October 12, 2001, Commissioner Murphy observed that sanctions beyond the incentive credits in the New Jersey BPU staff's proposal may be required for persistent performance failures that could damage the reputation of the CLEC and result in the loss of customers. In response, the New Jersey BPU Staff stated that it would "incorporate into the order" provisions addressing this concern. Minutes of New Jersey BPU Board Meeting, October 12, 2001 at 12. A Commissioner also urged the New Jersey BPU Staff to make recommendations regarding the levels of harm that might warrant remedial relief over and above incentive credits. *Id.* Thus, there remains uncertainty concerning the remedial provisions that the NJ BPU will approve in its final written order.

49. At this juncture, because the New Jersey BPU has not issued a written order, there is no final order as to which a motion for reconsideration or any appeal could be sought. The mere fact that Verizon extols the virtues of the proposed New Jersey PIP for purposes of its Section 271 application does not foreclose the possibility that Verizon could appeal the final written order of the New Jersey BPU once it is finally issued. Notably, in Pennsylvania, Verizon appealed the Order of the Pennsylvania Public Utilities Commission ("PA PUC") approving the Pennsylvania Performance Assurance Remedy Plan ("PAPAP"), arguing that the PA PUC lacked the requisite authority under Pennsylvania law to require Verizon to pay penalties to CLECs for

failing to meet performance standards.[39] And, significantly, Verizon challenged the authority of the PA PUC to impose any remedies, while simultaneously arguing that the PAPAP constituted probative evidence that it would comply with the checklist after Section 271 relief. Recognizing the incongruity of Verizon's positions, the PA PUC, as a condition of Section 271 approval, required Verizon to withdraw its appeal. Verizon subsequently withdrew its appeal without prejudice.

50. Because Verizon withdrew its appeal without prejudice, AT&T and other commentors argued that Verizon could not properly rely on the remedy plan because it was free to resurrect its legal challenge of the PA PUC's authority at any time. In concluding that the PAPAP provided sufficient incentives to foster post-entry statutory compliance, the Commission gave considerable weight to the PA PUC's observations that it "was satisfied by Verizon's withdrawal of its previous lawsuit challenging the Pennsylvania Commission's authority to influence a PAP," as well as the PA PUC's stated belief that "Verizon is not likely to maintain a claim, in a subsequent litigation after Section 271 approval is obtained . . . ." *Pennsylvania 271 Order* ¶ 132 & n.454.

51. The current status of the development of the New Jersey PIP is markedly different from that of the PAPAP at the time of Section 271 approval. In New Jersey, no written order has been issued approving the PIP. The CLECs and this Commission remain in the dark regarding precisely what provisions will be included in any final written order. Once any final written order is issued, any interested party, including Verizon, could seek modification of or appeal

[39] *Verizon Pennsylvania Inc. v. Pa PUC*, Petition for Review, 1902 C.D. 2000, Commonwealth Court of Pennsylvania.

from the final order. Verizon could challenge, as it has before, the very authority of the State regulatory body to impose any self-executing remedies. And, of course, it remains unclear whether the appellate process will yield substantial modifications to or the entire jettisoning of the proposed PIP. Against this backdrop, by relying on the New Jersey BPU Staff's proposed PIP before the issuance of a final order, Verizon is putting the proverbial cart before the horse.

52. Even assuming *arguendo* that Verizon can properly rely on the proposed New Jersey PIP to support its application, the plan contains fundamental structural flaws that preclude it from providing any meaningful protection against discriminatory conduct by Verizon. These flaws include: (1) excessive reliance on "per-unit" incentive credits; (2) a statistical methodology that is biased in Verizon's favor; (3) provisions that fail properly to correlate remedies to the severity of the harm; and (4) waiver and exception provisions that create a rebuttable presumption that Verizon's failure to comply with the performance standards is appropriate, absolve Verizon of meeting parity standards, and have the potential to ensnare CLECs in protracted litigation that makes a mockery of the self-executing enforcement scheme that this Commission has envisioned.

B. The Transaction-Based PIP Will Yield Meager Penalties.

53. Unlike the New York performance remedy plan which is a measurement-based plan, the remedies under the proposed New Jersey PIP accrue primarily on a "per unit" or transaction basis. The "per unit" or transaction approach under the New Jersey PIP permits Verizon to avoid experiencing significant financial consequences for plainly discriminatory conduct. During the nascent stages of competition, it is unlikely that a CLEC will generate large volumes of orders. As a consequence, the transaction-based New Jersey PIP will generate modest, if not *de minimis*, levels of incentive credits. Moreover, the proposed New Jersey PIP has the perverse effect of placing CLECs in a Catch-22. To compete effectively within the marketplace and acquire significant market share, CLECs must obtain nondiscriminatory support from Verizon. However, under the proposed New Jersey PIP, Verizon can impede competitive entry and pay meager penalties based upon the paltry volumes of CLEC transactions resulting from Verizon's own anticompetitive conduct.

54. Currently, Verizon does not permit CLECs to have a full and fair opportunity to compete. As a result, CLEC transaction volumes are miniscule. Because Verizon's incentive credits are primarily driven by the number of CLECs with activity in an area and the duration and volume of units in an area, the New Jersey PIP creates powerful incentives for Verizon to engage in anticompetitive conduct that will thwart competition and keep transaction volumes at low levels. Thus, for example, if Verizon provided poor performance to the DLECs and Northpoint exited the market, VNJ's remedy payments under the New Jersey PIP would be reduced. If Rhythms declared bankruptcy and ceased operations, Verizon's financial exposure under the PIP

would be reduced further. Rather than providing a strong incentive that compels Verizon's compliance with its statutory obligations, the PIP has the opposite effect.

55. This conclusion is confirmed by examining penalties assessed under OR-5-03, which measures the flow through rate of orders that are designed to flow through various systems without manual intervention. If a CLEC generated 5,000 flow-through orders in a month but Verizon only handled 80% of them electronically, rather than the required 95%, Verizon would incur penalties of approximately $56,000 for that month.[40] Using this example, 1000 CLEC orders would have been manually processed. If, as a result of problems with the manual processing, only 250 of those 1000 customers chose to remain with Verizon, Verizon could expect to retain at least $54,000 in annual local service revenue from those customers. Verizon, of course, could also receive toll revenues from those customers. Meanwhile, the CLEC would have suffered both a loss in revenue and damage to its reputation. The attached worksheet to this declaration details this analysis. *See* Att. 5.

56. In contrast, the OR-5-03 measure in New York is an enforceable performance standard that is subject to more meaningful remedies. Recognizing the importance of this measurement, the New York Public Service Commission established a special provision in the New York performance assurance plan that requires Verizon to pay $2.5 million for each quarter, or $10 million annually, if it fails to meet the achieved flow-through rate or the total flow through rate, the latter of which is not included in the New Jersey PIP.[41] In marked contrast, the

[40] This is based on the per unit amounts in the proposed PIP.

[41] Similarly, the Massachusetts performance remedy plan places over $5 million at risk under the flow through special provision. Under the Massachusetts plan, "Verizon must achieve 80 percent total flow-through and 95 percent achieved flow-through for UNE orders." *Massachusetts 271 Order* ¶ 83 n. 257. The New Jersey PIP is

New Jersey PIP contains no similar special provisions attaching significant penalties for Verizon's failure to meet the achieved flow-through rate standard. In fact, the transaction-based PIP will assure that Verizon will not experience serious financial consequences for its failures in this area. As a consequence, in New Jersey, Verizon can simply treat its failure to meet the benchmark standard under the achieved flow through rate measure as "the cost of doing business." Worse yet, unlike in New York and Massachusetts, Verizon pays no penalties if its total flow through rates in New Jersey are woefully inadequate. Thus, under the proposed New Jersey PIP, Verizon has no real incentive to improve its overall flow through rates by increasing the categories of orders that can flow through.

C. The PIP Uses an Improper Confidence Interval.

57. The PIP correctly recognizes that an appropriate statistical analysis should be used to determine whether discrimination exists where Verizon's performance for CLECs can be compared to Verizon's performance for its own retail operations. However, the PIP adopts a 95% one-tailed confidence interval, resulting in a critical value of 1.645 against which to compare the value of the Z-statistic. *See* PIP at 21. AT&T disagrees with this approach which is biased in favor of Verizon.

58. In any statistical analysis, there are inherent risks of reaching one of two distinct types of testing errors. "Type I" errors occur when a statistical test reveals that the ILEC is not meeting its obligation to provide parity of service when, in fact, it is. The ILECs, of course,

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plainly insufficient to create the necessary incentives to improve order flow through. Both New York and Massachusetts recognized and relied on the strength of their flow through special provisions to drive Verizon to ***improve*** flow-through rates post 271 approval. The PIP remedies will not be effective in driving such improvements.

would like to minimize the probability of Type I errors. There are two "tails" to Type I errors, however, only one is pertinent here: errors relating to cases in which the ILEC's performance for the CLEC is worse than its performance for itself.

59. By contrast, Type II errors occur when a statistical test reveals that the ILEC is providing parity of access, when, in fact, it is not. From the CLEC's perspective, the statistical test procedure should be designed so as to minimize the probability of Type II errors.

60. Both types of errors are important in determining whether parity of access has been and is being delivered to the CLEC. Type II errors are as real as Type I errors and may be more harmful to competition. As a result, there may be instances in which the ILEC is not providing equal service to the CLEC, however, purely by chance, the statistical test fails to detect this problem. In any event, it is necessary to strike a balance between Type I and Type II errors. Because sample sizes cannot be controlled, if the Type I error rate selected in the statistical methodology is too small, the Type II error rate will be large. The converse is also true.

61. Under the New Jersey PIP, the probability of a Type I error is held at 5%. Although, an error rate of 5% reduces the risk that Verizon will be falsely accused of providing discriminatory service to the CLECs, there is an increased risk to a Type II error (not declaring Verizon to be out of parity when in fact it is). Thus, the statistical methodology the PIP is biased in Verizon's favor.

62. These two types of error are related such that, as the size of one error probability decreases, the other increases. Accordingly, the probability of Type I and Type II errors should be balanced. The balancing of such probability will depend upon, *inter alia*, the effective number of CLEC and Verizon observations. Based upon AT&T's analysis of data produced in

other proceedings, it has determined that the risks of Type I and Type II errors are both balanced at a level of 25%.

D. The PIP Does Not Adequately Address Severity of Performance.

63. The PIP also provides inadequate protection for competition by failing to correlate properly the severity of competitive harm with penalty payments. The PIP categorizes the severity of performance failures as minor, moderate, or major based upon absolute thresholds. For all percent measures: a minor miss is a 0.1 to less than a 5% difference; a moderate miss is a 5 to 15% difference; and a major miss is greater than a 15% difference. PIP at 21. However, these absolute thresholds are plainly arbitrary and are not sensitive enough to detect discrimination of moderate or major severity. Thus, for example, if Verizon missed only 4% of its appointments for its retail customers, a difference would not be classified as a moderate miss until the CLEC value reached 9% (more than twice the Verizon value) or a major miss until the CLEC value reached 19% -- five times the Verizon value.

64. The threshold becomes even more absurd when a benchmark or parity standard is at the highest ranges of the percentage scale. A parity or benchmark standard set at 97% indicates that a well-controlled process exists (typically a highly mechanized process) that should not yield significant deviations in performance results. Accordingly, a benchmark of 97% that is missed by 5% should be treated as a severe miss,[42] while a 5% miss of 80% benchmark would be less severe since it applies to a less-controlled process. The absolute thresholds in the PIP are

[42] *See, e.g.*, Carrier-to-Carrier Guidelines, OR-4-02, that establishes a 97% benchmark standard for the delivery of timely completion notices.

inappropriate and do not properly correlate remedies with the severity of harm occasioned by Verizon's anticompetitive conduct.[43]

E. The Waiver And Exception Provisions Are Fundamentally Flawed.

65. The waiver and exception provisions in the proposed PIP also demonstrate that the plan is neither self-executing nor capable of detecting discriminatory performance. In its Application, Verizon states that, if "events such as emergency, catastrophe, natural disaster, severe storms, or other events beyond Verizon's control cause Verizon to miss a measurement, Verizon must pay any resulting penalties into an escrow account." Guerard/Canny/DeVito Decl. ¶ 168. Verizon also asserts that "[s]imilar provisions exist" in the New York performance remedy plan. *Id.* Verizon's description regarding the operation of the force majeure provision in the PIP is incomplete and misleading. And, despite Verizon's assertions to the contrary, the force majeure provisions in the PIP differ in critical respects from those adopted in New York.

66. The PIP incorporates by reference Exhibit 1 to the New Jersey C2C Guidelines. Exhibit 1 to the C2C Guidelines states that "BA shall not be responsible for a failure to meet a performance standard, to the extent such failure was the result of: (a) a Force Majeure event; (b) a statistically invalid measurement; or, (c) Event Driven Clustering, Location Driven-Clustering, Time Driven Clustering, or CLEC Actions, as described in Appendix J."[44] Exhibit 1 also describes force majeure events and the procedure for Verizon's invocation of this exception (*id.*):

> Force Majeure events include the following: (a) events or causes beyond the reasonable control of BA; **or**, (b) unusually severe weather conditions, earthquake, fire, explosion, flood, epidemic,

[43] AT&T submitted an alternative remedy plan that included methodologies for assessing severity of harm. This plan was not adopted by the NJ BPU Staff.

[44] Exhibit 1, ¶ 3.

> war, revolution, civil disturbances, acts of public enemies, any law, order, regulation, ordinance or requirement of any governmental or legal body, strikes, labor slowdowns, picketing or boycotts, unavailability of equipment, parts or repairs thereof, or any acts of God.
>
> If BA claims that it is excused under Exhibit I Section 3 from meeting a performance standard due to a Force Majeure event, BA will submit notice to the Board and all affected CLECs within 5 business days of the event. If any interested party wishes to dispute BA's claim, it must do so within thirty (30) calendar days after the monthly report is submitted to the Board, that party shall request that the Board institute an appropriate proceeding to resolve the dispute. If it is determined that no Force Majeure even existed, BA must pay the remedy with interest associated with the failure to meet the performance standard for that reporting period.
>
> If at that time of the reporting period the specified performance standard was not met, BA will pay the appropriate remedy into an interest bearing escrow account. If no party disputes Bell's claim of a Force Majeure event within 30 days of the monthly report, the escrowed funds revert back to Bell Atlantic.

67. Thus, in order to invoke the force majeure clause, Verizon is only required to file a simple notice, and the onus is on the CLECs to initiate any challenge thereto. As a consequence, Exhibit 1 necessarily creates a rebuttable presumption that Verizon's non-compliance with the performance standard is reasonable. Furthermore, although Verizon possesses all of the information relating to the purported force majeure event, Exhibit 1, nevertheless, foists the burden on CLECs to determine *in advance* whether Verizon is entitled to relief under this provision and institute a proceeding challenging Verizon's decision.

68. In addition, Exhibit 1 is written so broadly that Verizon's successful invocation of the force majeure clause would absolve Verizon of any responsibility to comply with parity standards. The following example illustrates the inherent unfairness of this provision. Assume

that, as a result of a significant labor strike, Verizon is unable to complete orders in a timely manner. Assume further that, during the strike, Verizon decided to give preferential treatment to its own retail orders and delay the provisioning of CLEC orders. Such discriminatory conduct should not be excused simply because it coincides with a purported force majeure event. A force majeure event should not suspend the operation of the Act and should not be used as a license to discriminate. However, Exhibit 1 is written so broadly that it has precisely such an effect.

69. Furthermore, although Verizon, in its Application, tries to leave the impression that the force majeure provision relates *only* to events beyond its reasonable control, Exhibit 1 states explicitly that a force majeure includes such events *or* "unusually severe weather conditions . . . picketing or boycotts, [and] unavailability of equipment, parts or repairs thereof . . . ." *Id.* (emphasis added). Thus, arguably, Verizon could invoke the waiver provision if a single person held a boycott, if a single protester picketed a worksite, if a single truck had a flat tire, or if any piece of equipment were unavailable or broken. In fact, the clause is written so broadly, that, even if the unavailability of equipment is entirely Verizon's fault, Verizon's failure to meet the performance standard is excused. Clearly, these overreaching and vague provisions are subject to abuse and have no place in the C2C Guidelines that are designed to measure whether Verizon is providing discriminatory wholesale service to CLECs. Furthermore, such provisions should not be included in any remedy plan so that Verizon can escape experiencing financial consequences for failing to meet a performance standard.[45]

[45] Exhibit 1 also provides that Verizon can be excused if a performance failure was the result of a "statistically invalid measurement." This provision is nonsensical. The C2C Guidelines contain a statistical methodology that purportedly ensures that performance results will capture any statistically significant differences in performance results. Although AT&T objects to the confidence level in this methodology, Verizon should not be permitted to unilaterally declare, for unspecified reasons, that a particular measure is no longer statistically valid.

70. Worse yet, although Exhibit 1 requires CLECs to initiate any challenge to Verizon's invocation of the waiver provision, it provides no specific time frame for the resolution of the dispute. The absence of a deadline for quick resolution of any waiver dispute process means that the CLECs, which are saddled with the burden of instituting litigation to collect what were supposed to be automatic penalties triggered by seamless, self-executing mechanisms, could be mired in protracted litigation that could delay indefinitely penalty payments for plainly discriminatory conduct. The establishment and enforcement of performance remedies in a time frame that is consistent with the dynamics in the marketplace are essential to competitive entry.

71. Moreover, despite Verizon's assertions to the contrary, the force majeure provisions in the New Jersey PIP are strikingly different from those in New York in several critical respects. Although the New York performance remedy plan correctly recognizes that BA-NY's performance under the C2C Guidelines could be affected by "factors beyond BA-NY's control," the New York plan -- unlike the New Jersey PIP -- appropriately places the burden on BA-NY to petition the New York Public Service Commission for a waiver of performance results and requires BA-NY to "demonstrate [in the petition] clearly and convincingly the extraordinary nature of the circumstances involved, the impact that the circumstances had on BA-NY's service quality, why the Company's normal, reasonable preparations for difficult situations proved inadequate, and the specific days affected by the event."[46]

72. The New York remedy plan also does not relieve BA-NY of its obligation to meet parity standards simply because of a force majeure event. The New York remedy plan explicitly

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[46] BA-NY Compliance Filing dated April 7, 2000 at 18.

states that "BA-NY may . . . petition for a waiver of specific performance results for those metrics that have performance targets dictated by absolute standards," and that "[t]his waiver process shall not be available for those metrics for which BA-NY's wholesale performance is measured by comparison to retail performance (parity metrics)." *Id.* at 18.

73. Furthermore, unlike the New Jersey PIP which contains no time frame for resolution of any disputes under the waiver provision, the New York remedy plan states that "[t]he resolution of a waiver exception request will occur prior to the scheduled payment period." *Id.* at 19. For all these reasons, Exhibit 1 incorporated in the New Jersey C2C Guidelines and the PIP is seriously flawed and should be corrected before Section 271 entry.[47]

[47] The Virginia State Corporation Commission and the District of Columbia Public Service Commission have rejected Verizon's attempts to include Exhibit 1 as part of the performance reporting guidelines. Order Establishing Carrier Performance Standards With Implementation Schedule and Ongoing Procedures to Change Metrics, *Ex Parte: Establishment of Carrier Performance Standards for Verizon Virginia, Inc.*, Case No. PUC010206 (Va. State Corp. Comm. Jan. 4, 2002) at 13; Order 122330, Formal Case No. 990, *In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District of Columbia* (D.C. Pub. Serv. Comm. Nov. 9, 2001) ¶ 131.

CONCLUSION

74. Verizon entreats this Commission to approve its Application even though its performance data are incomplete, inaccurate and unreliable. Verizon invites this Commission to approve its Application based on a proposed PIP, the precise contours of which remain unclear and even though no final written appealable order has been issued. Furthermore, Verizon urges the Commission to find that the proposed PIP contains sufficient incentives to deter anticompetitive conduct even though Verizon could appeal the final order and challenge the very authority of the State regulatory body to impose penalties. And Verizon invites the Commission to approve its Application based upon a PIP containing fundamental structural deficiencies rendering it wholly inadequate to deter anticompetitive conduct post-Section 271 entry. This Commission must and should decline this invitation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: January 1[illegible], 2002

Joseph R. Bloss

Joseph R. Bloss

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on January 14, 2002

E. Christopher Nurse

ATTACHMENT 1

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
NEWARK, NEW JERSEY MONDAY, NOVEMBER 5, 2001

IN THE MATTER OF THE	:	
CONSULTATIVE REPORT OF	:	
THE APPLICATION OF	:	BPU DOCKET NO.
VERIZON-NEW JERSEY, INC.	:	TO-001090541
FOR FCC AUTHORIZATION TO	:	
PROVIDE IN-REGION, INTER-	:	
LATA SERVICES IN NEW JERSEY.	:	
----------------------------	:	

B E F O R E: PRESIDENT CONNIE O. HUGHES
COMMISSIONER CAROL MURPHY
COMMISSIONER FREDERICK F. BUTLER

A P P E A R A N C E S:

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of it?

A (Canny) No. There is not.

Q Now, how about for metric covering line sharing and line splitting. Have they been implemented yet?

A (DeVito) They have not been implemented. The Board just acted and approved that on October 12th.

Q And now if Verizon was not providing dark fiber as required for line sharing or line splitting as required, could that satisfy the checklist in your mind?

A (DeVito) Sure.

A (Canny) I would say that I'm dealing with what we actually measure, not a legal opinion of what satisfies the checklist.

Q Ms. DeVito, you mentioned, you said "sure" even though you know they're not providing as unbundled network elements. In your view though wouldn't prevent compliance with the checklist?

A (DeVito) The guidelines measure various products and various unbundled network elements and to the extent that maybe not every

A (Canny) I would have to look at each checklist item and go through that in detail. That may be true.

Q You didn't do that in preparation of your declaration, right, go through every element of the checklist to see if that was true?

A (Canny) I think from the aspect that's what we are - - in our definition of aspect was covering the activities, et cetera, for services that we measure or can measure in the checklist.

Q Can you measure dark fiber?

A (Canny) Could it be?

Q Yes.

A (Canny) Yes.

Q But it's not being remeasured?

A (Canny) It's not required to be measured.

Q So why - - so I understand the way you use aspect here is limited to what's in the guidelines, right?

A (Canny) Yes.

Q Now, for the line sharing and line splitting, Verizon's going to start reporting that data in December.

Is that correct?

A (DeVito) We've not received the Court order, but it is effective in November, November 1st. It is effective as of November 1st. So it would - - it would be reported in December, the November reporting month.

PRESIDENT HUGHES: Would you speak up, please. We are having a very difficult time hearing the testimony.

MS. DE VITO: Sorry.

MR. PAPPALARDO: Do you want the answer repeated?

PRESIDENT HUGHES: Yes, please.

MS. DE VITO: The new measures are effective as of November 1st which would be implemented in December for the November report.

Q So - -

A (DeVito) We have yet to receive the order and we do need to review that in detail when we receive that.

(Whereupon, Response to Data Request AT&T Request Set 1, Number 145 is received and marked Exhibit AT&T-2 for Identification.)

Q If you can just take a look at this response. I think there's a typo in reference to the "BTU". It should be "BPU".

Looking at the second paragraph of the response, the sentence begins "Verizon-New Jersey."

A (Canny) Yes.

Q My question is, just to follow up on the statements made by Ms. Haraldson and I think you had made, Ms. Canny, Verizon even for consensus matters of the working group, they cannot unilaterally implement those in New Jersey without Board approval?

A (Canny) That's correct.

Q And any changes to those guidelines need Board approval, right?

A (Canny) Any changes to the guidelines themselves, yes.

Q Now, in your reply testimony, you have addressed special access services. Do you one, no.

Q But there is nothing stopping Verizon from implementing it without Board approval?

A (Canny) I would say if the CLEC found us out of compliance with the guidelines, they could certainly go to the Board and bring it up. And we have been very open with the change controls. We have that information at hand for us to have a dispute about it.

Q Now, when for all the metrics adopted by the Board last year required to be implemented, do you know?

A (DeVito) There was a schedule established by the Board to implement the measures that ranges over a period of time from June through August, 2000.

Q And at least as of today OR-6-03 is still classified as undevelopment?

A (DeVito) Yes, OR-6-03 is still classified as underdevelopment.

Q And did Verizon obtain a waiver from the Board to not report that one?

A (DeVito) We notified the Board